BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

SHIRLEY L. MEEKS	)	
Claimant	)	
	)	
VS.	)	
	)	
ESSEX GROUP	)	
Respondent	)	Docket No. 170,265
	)	
AND	)	
	)	
NATIONAL UNION FIRE INS. CO.	)	
Insurance Carrier	)	
	)	
AND/OR	)	
	)	
WORKERS COMPENSATION FUND	)	

ORDER

Claimant requests review of a Post-Award Medical Award entered by Administrative Law Judge Bruce E. Moore on April 9, 2002.

ISSUES

This is an appeal from an award entered after a hearing on an application for post-award medical treatment. The Administrative Law Judge awarded payment of the expenses for chiropractic treatment claimant had received but limited such payments to the time period commencing six months before the filing of the application for post-award medical treatment. In addition, the Administrative Law Judge denied claimant's request for additional chiropractic treatment.

The claimant appealed and argues the Administrative Law Judge erred in denying payment for all of the expenses of chiropractic care provided. Claimant argues the chiropractic treatment was provided upon referral from the treating physician. The claimant further argues she is entitled to additional chiropractic treatment to provide relief from the symptoms caused by her work-related injury.

The respondent and its insurance carrier argue claimant received chiropractic treatment without their knowledge and that the treating physician was only authorized to provide surgery, not to make referrals to other health care providers. Respondent and its insurance carrier further argue that, in any event, the referral from the treating physician was for a chiropractic evaluation and not treatment. Lastly, respondent and its insurance carrier conclude that even though the chiropractor had been advised the claimant's injury was work-related, the doctor neither requested authorization nor timely submitted his billings as required by K.A.R. 51-9-10(a).

The Workers Compensation Fund (hereinafter Fund) notes it was unaware claimant was receiving chiropractic treatment and argues a specific chiropractor was never authorized. Moreover, it further argues the treating physician clearly indicated he only requested a chiropractic evaluation.

FINDINGS OF FACT

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

An Award of compensation was entered in this claim on April 15, 1997, finding claimant suffered a 38 percent work disability. The Award provided that future medical treatment would be considered upon proper application. The Board affirmed the Award on October 15, 1997.

The claimant sought post-award medical treatment. A hearing on her application was held October 9, 1998. The Administrative Law Judge ordered an independent medical examination with C. Reiff Brown, M.D. Dr. Brown recommended claimant be evaluated by a surgeon to determine whether surgery would be appropriate. Ultimately, Kris Lewonowski, M.D., an orthopedic surgeon, performed an evaluation of the claimant and recommended simultaneous combined anterior and posterior fusions at L3-4, L4-5 and L5-S1.

Because the surgery was neither authorized by respondent and its insurance carrier nor by the Fund, the claimant proceeded to preliminary hearing seeking an order for respondent to provide the recommended surgery. After the hearing on October 8, 1999, the Administrative Law Judge issued an order of the same date which provided: "Dr. Lewonowski is designated as authorized treating physician and is authorized to proceed with surgery."

After the doctor further explained the risks and the proposed surgical procedure to the claimant, she expressed concern and decided to postpone surgery for as long as she was able to function. On July 25, 2000, the claimant returned to Dr. Lewonowski with continued complaints of severe low back pain radiating into her lower extremities.

Dr. Lewonowski's record of the July 25, 2000, office visit contained a plan to send claimant to physical therapy for back, lower extremity and abdominal strengthening. The plan also indicated the doctor wanted claimant to undergo some chiropractic manipulations. The plan concluded the doctor would see claimant back on an as needed basis. The doctor provided claimant with prescriptions for the physical therapy and for "chiropractic manipulation." The claimant testified she suggested Michael McIrvin, D.C., to Dr. Lewonowski but his prescription did not specify a particular chiropractor.

The claimant provided her attorney a copy of the prescriptions which were forwarded to counsel for respondent and its insurance carrier as well as counsel for the Fund.

On August 1, 2000, claimant selected Dr. McIrvin and began chiropractic treatment. Claimant testified she advised the doctor the treatment was for a work-related injury and that respondent was responsible for the medical bills. She also gave the doctor her attorney's name.

On August 10, 2000, counsel for the Fund wrote Dr. Lewonowski inquiring whether claimant should undergo physical therapy and chiropractic treatment at the same time. The letter further requested: "Could you please be more specific about the type of chiropractic manipulation you are ordering, . . ."

On September 14, 2000, Dr. Lewonowski responded in pertinent part: "I am sorry but I cannot be more specific about the type of treatment. I am not ordering the chiropractor to do specific treatment, that is his area of expertise. What I am basically asking is that she go in for a chiropractic evaluation to see if manipulations would do her any good. As far as physical therapy goes, standard and formal physical therapy is quite different from chiropractic manipulations, and I think she should do these at the same time."

It is undisputed that Dr. McIrvin did not submit his bills to respondent until September 17, 2001. The only explanation for the failure to submit the bills was contained in the doctor's letter of that date which noted he had great difficulty making contact with the appropriate parties for submission of his claims. The billings for the treatment he had provided claimant during the intervening 13.5 months totalled $5,732.99.

On November 27, 2000, claimant was examined, at respondent's request, by Donald D. Davis, M.D., a neurosurgeon. Dr. Davis opined claimant did not need surgery or any further treatment. On December 14, 2001, respondent's counsel wrote Dr. McIrvin and advised the doctor his treatment of claimant had not been and was not authorized. On December 28, 2001, claimant filed the instant application for post-award medical treatment seeking payment of Dr. McIrvin's billings and an order for additional chiropractic treatment.

Based upon the foregoing essentially undisputed facts, the Administrative Law Judge made several specific findings. Initially, the Judge denied claimant's request for additional chiropractic treatment. The claimant testified the chiropractic treatments provided pain relief. Dr. Davis opined that in light of claimant's lack of neurological findings she neither needed surgery nor additional treatment. The Administrative Law Judge determined the doctor's uncontradicted medical opinion was more persuasive. The Board agrees and adopts this finding.

The Administrative Law Judge next determined Dr. Lewonowski had not made an effective referral to Dr. McIrvin. In addition, the Judge concluded his previous order authorizing surgery did not contemplate chiropractic care and accordingly, the chiropractic treatment could not be considered authorized treatment under the previous Order dated October 8, 1999. The Board disagrees.

The Board concludes the Administrative Law Judge's October 8, 1999, preliminary hearing Order was clear and unambiguous. The Order stated: "Dr. Lewonowski is designated as authorized treating physician and is authorized to proceed with surgery." The Order not only authorized the doctor to perform surgery but also specified Dr. Lewonowski was the treating physician. The Board is mindful the recommended surgery was the primary medical treatment claimant had requested. But the Board finds there was no limitation preventing Dr. Lewonowski from making referrals for claimant's treatment. The Order did not limit Dr. Lewonowski's treatment to surgery. If that was the case, the Order should have specifically contained that limitation. Instead, the Order specifically designated Dr. Lewonowski as the authorized treating physician.

After claimant chose not to proceed with surgery she was never advised that Dr. Lewonowski was no longer authorized. The Board finds, under these circumstances, the claimant correctly concluded Dr. Lewonowski was the authorized treating physician even after she chose not to proceed with surgery.

It is an axiom of workers compensation that an authorized treating physician may refer an injured worker to other medical specialists and the employer is responsible for the obligation for the medical services rendered as a result of such referral.[1]

Claimant sought treatment with Dr. Lewonowski for her ongoing symptoms of low back pain radiating into her lower extremities. As a result of her office visit on July 25, 2000, claimant was provided a prescription for "chiropractic manipulation." It should be noted claimant testified she suggested Dr. McIrvin to Dr. Lewonowski, but the prescription did not specify a particular chiropractor. The prescription was clearly for chiropractic manipulation and was not limited in any fashion. Accordingly, the Board finds the referral was for chiropractic treatment. Furthermore, it was likewise reasonable for claimant to

[1] Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973).

conclude Dr. Lewonowski had no objection to Dr. McIrvin based on her uncontradicted testimony she had suggested that particular chiropractor.

Claimant provided a copy of Dr. Lewonowski's prescription to her attorney and it was forwarded to counsel for respondent and its insurance carrier and the Fund. The claimant clearly wanted to pursue the recommended treatment. Although, claimant's counsel was copied on a letter to Dr. Lewonowski questioning the nature of the chiropractic treatment, the record does not reflect whether claimant was apprised of that letter. Moreover, there is no indication either claimant's counsel or claimant were provided a copy of Dr. Lewonowski's response. As the Administrative Law Judge noted, communication among the parties had apparently ceased. In any event, Dr. Lewonowski's response left it up to the discretion of the chiropractor regarding the nature of the treatment and the last sentence of his response clearly indicated the doctor envisioned chiropractic manipulations would occur at the same time as the prescribed physical therapy.

Notwithstanding the knowledge that claimant had been prescribed chiropractic treatment as well as physical therapy, neither respondent and its insurance carrier nor the Fund scheduled a referral for such treatment. Moreover, claimant was not advised such treatment would not be authorized or that Dr. Lewonowski was no longer the authorized treating physician.

Absent any response from respondent and its insurance carrier or the Fund, claimant sought out a chiropractor and began a course of treatment. Claimant testified she advised the chiropractor her injury was work-related and that the medical bills should be submitted to respondent. Claimant also apprised the chiropractor of her attorney's name. Claimant had attempted to apprise everyone of her actions and certainly could not control the chiropractor's failure to timely bill for her treatment.

Under the facts presented, the authorized treating physician, Dr. Lewonowski made a referral for chiropractic treatment. Respondent and its insurance carrier and the Fund neglected to provide the appropriate medical treatment as recommended by the authorized physician, Dr. Lewonowski. Moreover, the respondent and its insurance carrier and the Fund never disapproved such referral. Accordingly, the claimant's actions in obtaining those services was appropriate and the expenses for such chiropractic treatment are the liability of the respondent and its insurance carrier and the Fund as authorized medical treatment.[2] Therefore, the Board modifies the Administrative Law Judge's Order to reflect Dr. McIrvin's entire bill is payable as authorized medical subject to the provisions of K.S.A. 44-510i.

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[2]K.S.A. 44-510k provides an award of medical treatment shall not relate back six months from the filing of the application for post-award medical treatment. The Administrative Law Judge limited payment of the chiropractor's bills to six months prior to the filing of the application for post-award medical treatment. Because of the finding the chiropractic treatment was authorized pursuant to the Administrative Law Judge's Order dated October 8, 1999, the prohibition is not applicable.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post-Award Medical Award entered by Administrative Law Judge Bruce E. Moore dated April 9, 2002, is modified to reflect the Respondent, its insurance carrier and the Fund are ordered to pay, subject to the provisions of K.S.A. 44-510i, all of Dr. McIrvin's medical billings. The Post-Award Medical Award is affirmed in all other respects.

IT IS SO ORDERED.

Dated this _____ day of June 2002.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

c: M. John Carpenter, Attorney for Claimant
Jerry M. Ward, Attorney for Respondent
Richard L. Friedeman, Attorney for WC Fund
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Workers Compensation Director